

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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In the Matter of )  
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Implementation of Section 302 of )  
the Telecommunications Act of 1996 )  
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OPEN VIDEO SYSTEMS )  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

CS Docket No. 96-46

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**REPLY COMMENTS OF  
RESIDENTIAL COMMUNICATIONS NETWORK, INC.**

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April 11, 1996

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**REPLY COMMENTS OF  
RESIDENTIAL COMMUNICATIONS NETWORK, INC.**

Residential Communications Network, Inc. ("RCN"), by its undersigned counsel, hereby submits its Reply Comments in the above-referenced proceeding. As it indicated in its initial comments filed April 1, 1996, RCN has a substantial interest in assuring that the rules implementing Open Video Systems ("OVS") are developed in a manner which encourages local telephone companies -- both incumbent and new entrants -- to develop OVS platforms which enable multi-channel video programming distributors ("MVPDs") like RCN to distribute competitive video programming to subscribers. A review of the comments filed by every entity who, through the availability of OVS, would have an opportunity to add to the level of competition in the video marketplace as either an independent MVPD or as an OVS operator overwhelmingly concurred with RCN's position that the Commission's rules must provide "broad flexibility in determining how to enter the video marketplace in order to encourage

telephone company entry and spur competition and new investment.”<sup>1</sup> As these parties all agree, unnecessary regulation, or regulation which envisions a preconceived structure for how OVS systems will develop in the marketplace, would stifle the development of new and innovative means of delivering video programming to the public, thereby preventing the market from achieving Congress’ goal of developing competitive options for consumers.

The record thus speaks for itself with respect to the principles which must guide the Commission as it develops rules to implement Section 653(b)(1) of the Telecommunications Act of 1996. The Comments filed on behalf of several local exchange carriers took these principles one step farther and proposed rules for the Commission’s consideration.<sup>2</sup> RCN appreciates the effort of these commenters to provide specific rules to the Commission and to other parties, since the time limits for Commission decision are short, and the specific proposals presented afford parties an opportunity to comment on the proposals in their reply comments.

RCN believes, with modifications and additions, that the adoption by the Commission of the proposed rules will permit the marketplace to develop the kind of innovative competitive options sought by Congress, while at the same time assuring that the statutory obligations imposed in the 1996 Act are met by OVS operators. Given the commenters’ perspective as incumbent local telephone companies with ubiquitous networks and already-defined OVS

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<sup>1</sup> *In re Implementation of Section 302 of the Telecommunications Act of 1996, Open Video Systems and In re Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, Report and Order and Notice of Proposed Rulemaking*, at ¶ 2, CC Docket No. 87-266 (Terminated) and CS Docket No. 96-46, FCC 96-99 (released Mar. 11, 1996) (“NPRM” or “Notice”).

<sup>2</sup> *Comments of Bell Atlantic, BellSouth, GTE, Lincoln Telephone, Pacific Bell, SBC Communications* at Appendix (filed Apr. 1, 1996).

platform structures, however, the proposed rules are, in certain respects, drafted from that perspective and therefore might inadvertently circumscribe the flexibility for other local exchange carriers to develop OVS networks and services which are tailored to their own network configurations and the demands of their potential programmer customers. Accordingly, RCN submits the following comments on those specific provisions of the proposed rules which RCN submits should be modified to assure that all LECs are encouraged to develop OVS networks. By modifying the proposed rules in the manner set forth below, RCN believes that MVPDs such as RCN will be assured competitive options for delivering their programming and that consumers therefore enjoy the benefits of a vigorously competitive video marketplace.

**COMMENTS ON SPECIFIC PROVISIONS OF THE RULES PROPOSED BY  
BELL ATLANTIC, BELL ATLANTIC, BELL SOUTH, GTE, LINCOLN  
TELEPHONE, PACIFIC BELL, SBC COMMUNICATIONS**

**§ \_\_. \_\_ Definitions.**

(b) Open video system operator ("operator"). Any person or group of persons who provides cable service over an open video system, ~~either directly, through an affiliate, or through independent video programming providers~~, and directly or through one or more affiliates owns a significant interest in such open video system.<sup>3</sup>

**§ \_\_. \_\_ Certificates of compliance.**

(a)(4) The date the open video system is scheduled to commence providing service to ~~video programming providers subscribers~~.

RCN submits that these two proposed modification will permit local telephone companies and others who do not seek to offer video programming services to subscribers (either

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<sup>3</sup> To show the changes proposed by RCN, new language will be "redlined" and language to be deleted will be ~~stricken~~.

directly or through an affiliated video programming provider) to develop OVS networks and services.

**§\_\_.\_ Certificates of compliance.**

(d) Effect of Commission approval. Commission approval of a certificate of compliance shall preclude any state or local authority from taking the following actions: . . .  
(ii) imposing on an open video system operator any requirement or condition with respect to construction or operation of the open video system over public rights-of-way that is any more burdensome than requirements or conditions imposed on ~~any other local telephone company~~ or any other entities using such public rights-of-way for interstate communications services.

RCN submits that this provision is necessary to assure that local authorities do not impose any more burdensome requirements on competitive LECs than they do on incumbent LECs, as well as other carriers who use public rights-of-way for interstate communications facilities.

**§\_\_.\_ Incorporation of selected provisions of part 76.**

~~Note 1: The provisions of Subpart O [Competitive Access to Cable Programming] require that video programming providers shall not be denied the ability to offer cable programming which falls within the meaning of Subpart O to their subscribers.~~

Given the experience in the video dialtone (“VDT”) context, RCN submits that the Commission must vigorously enforce its program access rules with respect to open video systems and should add this note to make the 1996 Act’s mandate undebatable. *See Comments of NYNEX* at 20.

**§\_\_.\_ Incorporation of selected provisions of part 76.**

~~Note 2: The sports, network and syndication provisions should be applied to the entity that controls the programming.~~

For the reasons set forth in the Comments filed by NYNEX, RCN submits that the Commission must add this note to clarify the proposed rule

**§\_\_.\_ Carriage on open video systems.**

(a)(1) . . .

Note 1: Open video system operators ~~may be permitted to create a distinct class or classes of service in pricing based on credit considerations or financial stability. Operators are not permitted to manifest factors such as creditworthiness or financial stability in price differentials if such factors are already taken into account through different terms or conditions such as special credit requirements or payment guarantees, so long as such differences are applied reasonably and non-discriminatorily.~~

RCN submits that these changes are required to assure that no OVS operator which provides video programming to subscribers either directly or through an affiliate may impose unreasonable or discriminatory prices on unaffiliated video programming providers whose credit worthiness may be less substantial than that of the OVS operator. Since video programming providers will often be new companies like RCN, and the OVS operator will by definition be a telephone company or other entity which has substantial investment in network facilities, the provision as drafted could be used by the OVS operator to discriminate in favor of itself or its programming affiliate.

**§\_\_.\_ Carriage on open video systems.**

(a)(2) Requirements that video programming providers provide ~~reasonable assurances evidence~~ concerning their legal access to the programming such providers propose for carriage on the open video system prior to execution of the carriage agreement with the open video system operator. ~~Unless channel sharing is necessitated by demand which exceeds the capacity of the open video system, the open video system operator shall not require video programming providers to identify their proposed specific channel line-ups until such time as those channels become operational.~~

RCN submits that these changes are required to assure that no OVS operator which provides video programming to subscribers either directly or through an affiliate may impose unreasonable or anti-competitive conditions of service on unaffiliated video programming providers by requiring disclosure of their proposed programming, which requirements would eliminate the ability of any independent video programming provider to gain a marketplace advantage by offering new or innovative programming.

**§\_\_.\_ Carriage on open video systems.**

(a)(3) Requirements that video programming providers provide ~~reasonable~~ evidence concerning their ability to meet certain ~~reasonable and non-discriminatory technical~~ standards ~~demonstrating the technical ability of their equipment to transmit programming and to maintain a reasonable and non-discriminatory level of service quality in order to be provided carriage~~ on the open video system.

RCN submits that these changes are required to assure that no OVS operator which provides video programming to subscribers either directly or through an affiliate may impose unreasonable or discriminatory conditions of service on unaffiliated video programming providers by imposing technical requirements which would unnecessarily impede the ability of an independent programmer from access to the OVS network.

**§\_\_.\_ Carriage on open video systems.**

(b) . . .

Note 1: ~~Open video system operators~~ ~~To the extent that an open video operator provides programming services to subscribers either directly or through an affiliate,~~ it may limit the capacity made available to any single unaffiliated video programming provider to an amount no greater than the amount of channel capacity allocable to the operator and/or its affiliates.

RCN submits that the provision as drafted does not contemplate an OVS operator which does not offer video programming to subscribers itself or through an affiliate. In that case, the

draft might permit the OVS operator to limit the capacity available to individual video programming providers.

**§\_\_.\_ Carriage on open video systems.**

(c) . . .

Note: ~~The open video system operator may offer or market directly to subscribers all programming selected by it and/or its affiliate as well as programming on the open video system selected by unaffiliated video programming providers. To the extent that capacity of the open video system exceeds demand, an open video system operator or its affiliate is not limited with respect to the number of channels that it offers or markets directly to subscribers.~~

The provision as drafted means that no video programming provider could gain market advantage at any time by offering new or innovative programming alternatives, since the OVS operator would be permitted to market any such programming to subscribers as part of its services offerings. The revisions proposed by RCN clarify, however, that the OVS operator or its affiliate is in no way limited in the number of channels that it selects or markets to subscribers so long as capacity on the system exceeds capacity, thereby signaling the imposition of the statutory limitations on the number of channels which the operator may provide.

**§\_\_.\_ Dispute resolution.**

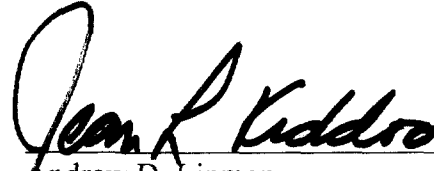
(d) Notice required prior to filing of complaint. Any aggrieved party intending to file a complaint under this section must first notify the potential defendant open video system operator that it intends to file a complaint with the Commission based on actions alleged to violate one or more of the provisions contained in this part or in Section 653 of the Communications Act. The notice must be in writing and must be sufficiently detailed so that its



recipient(s) can determine the specific nature of the potential complaint. The potential complainant must allow a minimum of ten (10) days for the potential defendant(s) to respond and/or cure the alleged violation before filing a complaint with the Commission.

RCN submits that this modification, which may have been implicit in the original proposal, would make it explicit that the OVS operator may cure the alleged violation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jean L. Kiddoo", is written over a horizontal line.

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